

INITIAL STATEMENT OF REASONS

January 24, 2003

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (the Act) (see Government Code Sections 8574.1 through 8670.72, and Public Resources Code Sections 8750 through 8760) provides, in part, for the development of oil spill contingency plans for vessels and marine facilities. These plans are to be used to prepare for the response effort that would be necessary in the event of a discharge of oil into the marine waters of the State. Additionally, the Act mandates that the Administrator establish guidelines, standards and formats regarding the adequacy of local government's oil spill contingency plan element of area plans, and establishes a program to provide grants to local governments to complete, update or revise the oil spill contingency plan element of their area plan. Additionally, the Administrator is required to establish regulations and guidelines that provide for the best achievable protection of the coastal and marine resources, and ensure that all areas of the coast are at all times protected by prevention, response, containment and clean-up equipment and operations.

Following the enactment of the above-cited legislation, and the establishment of the Office of Spill Prevention and Response (OSPR), regulations governing oil spill contingency plan elements for local governments were promulgated to ensure consistency among local government plans, as well as to coordinate between all levels of government that respond to oil spills in marine waters (i.e., local, state, and federal governments). This coordination is imperative for the timely and effective response to oil spills and to afford the best achievable protection of the California coast.

The proposed amendments to the regulations are needed to make clarifying amendments to make the grant approval process more effective and more efficient, and to provide consistency in the terminology and requirements of the local government's oil spill contingency plan with other regulations/requirements. The specific purpose for each adoption, amendment, or repeal contained in these proposed regulations is set forth below (grammatical/technical changes, including amendments to the authority and reference citations, have also been made throughout this subchapter which have no regulatory effect):

Section 852.60.2 Definitions.

Subsection (a) has been amended to add reference to Health and Safety Code Section 25503, which specifies the conditions under which the local government is required to implement a Hazardous Materials Area Plan.

Subsection (h) has been amended to clarify that the term "local plan" is used interchangeably with "local oil spill contingency plan element".

Grammatical/technical changes have also been made throughout this section without regulatory effect.

Section 852.60.4 Duties and Responsibilities

This section has been amended to clarify the terms used to describe the Unified Command system that is used for oil spill response, and to update the title of the state representative on the Unified Command. Also, reference to the MOU described in Subsection (d) has been included, which describes the local government representative's involvement with the Unified Command. Grammatical/technical changes have also been made throughout this section without regulatory effect.

Section 852.61.2 Grant Application Process.

Subsection (b) has been amended to limit the retention of the Grant Application to three years, which is consistent with most accounting and business practices.

Subsection (c) has been amended to repeal reference to the "Administrative Procedure Guide", which is no longer used by OSPR.

Grammatical/technical changes have been made throughout this section without regulatory effect.

Section 852.61.3 Grant Applicant Eligibility.

Grammatical/technical changes have been made throughout this section without regulatory effect.

Section 852.61.4 Grant Application Period.

This section has been repealed because all counties that have jurisdiction over or within marine waters have done their initial local oil spill contingency plan element, and are now only submitting updates. This section is being repealed because no new local plans are anticipated, so an application period deadline is not needed.

Section 852.61.5 Grant Amount.

Subsection (a) has been amended to remove the fiscal year reference, which is now obsolete.

Subsection (b) has been amended to remove the limitation on grant funds to be used for maps or mapping activities. Complete, accurate maps that are updated regularly are critical in oil spill response. Because all initial plans have been completed for local governments that have jurisdiction over or within marine waters, funds for activities to update plans that would result in more accurate, up-to-date maps are consistent with the purposes of the Local Government Grant Program, which is to facilitate a coordinated and effective oil spill response.

852.61.6 Contents of the Grant Application.

Subsection (a) has been amended to repeal reference to the “Administrative Procedure Guide”, which is no longer used by OSPR.

Subsection (b) has been amended to make all the components as listed of a local oil spill contingency plan proposal mandatory. Experience since the program began in 1993 has shown that all the elements listed in Subsection (b) are needed for an adequate plan proposal, and should not be left to discretion as to which elements are to be included in the proposal.

Grammatical/technical changes have been made throughout this section without regulatory effect.

852.61.7 Review of Grant Application.

Subsection (a) has been amended to remove reference to the application deadline (Section 852.61.4), which is being repealed in this rulemaking.

Grammatical/technical changes have also been made throughout this section without regulatory effect.

Section 852.61.8 Evaluation and Selection of Grant Recipient.

Subsection (d) has been amended to reflect the current Coast Guard Designated Areas, which are also specified in Title 14, Subdivision 4, CCR Section 790(g)(2).

Grammatical/technical changes have been made throughout this section without regulatory effect.

Section 852.61.10. Grant Agreement.

Grammatical/technical changes have been made throughout this section without regulatory effect.

Section 852.61.11 Terms and Conditions of a Grant Agreement.

Subsection (a) has been amended to make all of the items required in the midterm report mandatory. All of the information listed is necessary to allow the OSPR to determine whether a project is being completed in a manner consistent with the Grant Agreement.

Subsection (d)(3) has been amended to limit the retention of the accounting records and source documents to three years, which is consistent with most accounting and business practices.

Grammatical/technical changes have been made in this section without regulatory effect.

Section 852.61.12 Payment of Grant Funds.

Grammatical/technical changes have been made throughout this section without regulatory effect.

Section 852.62.1 Format and Consistency Requirements for Proposed Oil Spill Contingency Plan Element.

Subsection (a) has been amended to clarify that the local plan must be consistent with the programs or plans as listed, but do not necessarily need to incorporate the contents of those plans.

Subsection (b) has been repealed as being redundant with the information in Subsection (a).

Subsection (c) [new b] has been amended to remove the information that is redundant to Subsection (a).

[New] Subsection (c) has been added to provide information on the format required for the local plan, which must now be consistent with the format of the U. S. Coast Guard Area plans.

Section 852.62.2 Minimum Planning Requirements.

Grammatical/technical changes have been made throughout this section without regulatory effect.

Subsection (a)(1)(A) has been amended to clarify that the local government's primary contact person does not need to be available on a 24-hour basis, but their primary and after-hours telephone number is needed for notification of an oil spill.

Subsection (a)(1)(B) has been amended to clarify that it is the local government's primary contact person who makes the notifications in the event of an oil spill.

Subsection (a)(1)(C) has been amended to require a primary and after-hours telephone number for the local emergency response personnel, which is needed for timely notification of an oil spill.

Subsection (a)(1)(E) has been amended to clarify that the local response coordinator does not need to be available on a 24-hour basis. Also, the title of the state representative on the Unified Command has been updated to the terminology currently used. “Interim” has been removed as the Marine Oil Spill Contingency Plan has been approved and is now permanent document.

Subsection (a)(2)(A) has been amended to clarify the terms used to describe the Unified Command system, and the title of the state representative on the Unified Command, that is used for oil spill response. Also, the “Department of Fish and Game” has been replaced by “OSPR” because it is the OSPR, not the Department, which is charged with the primary responsibility during an oil spill event. The sentence: “...If appropriate, a Unified Command shall be established...” has been repealed as unnecessary and confusing because this subsection is describing the local government’s role on a Unified Command which has already been established. The line: “...or the designated State Liaison Officer...” has been removed because the State On-Scene Coordinator has the primary responsibility to coordinate response with the local government representative.

Subsection (a)(2)(B) has been repealed for clarity. As originally worded, this subsection implied that the local government could establish their own Incident Command System. The established protocol during oil spill response is that OSPR will establish the State’s Incident Command System, used within the Unified Command structure, and the local governments will be “plugged” into that system. Deleting this subsection will eliminate any confusion about the need for local government’s to establish their own Incident Command System. Subsequent subsections have been re-lettered.

Subsection (b) has been amended to reflect the new contents of this subsection.

Subsection (b)(1) has been repealed because the procedures and protocols for emergency response personnel are already dictated by the governance of the local government, and overseen by the appropriate requirements within the Occupational Safety and Health regulations. Including the procedures and protocols within the local plan is redundant and unenforceable by OSPR. Subsequent subsections have been re-lettered.

Subsection [new] (b)(1) has been amended to clarify the terms used to describe the Unified Command system.

Subsection [new] (b)(1)(M) now contains a requirement that a location(s) for a volunteer operations center facility be identified. It has been OSPR’s experience that during an oil spill incident there may be many “convergent” volunteers who are able and willing to assist in some capacity during the response. Finding an area large enough to register, process, train, and deploy these volunteers has been an issue during some spills. Having a location pre-identified will facilitate setting up the volunteer center to process volunteers so that they may be used in a response capacity in a more timely manner.

Subsection [new] (b)(2)(A) has been repealed for clarity. As originally worded, this subsection implied that the local government could establish their own Incident Command System. The established protocol during oil spill response is that OSPR will establish the State's Incident Command System, used within the United Command structure, and the local governments will be "plugged" into that system. Deleting this subsection will eliminate any confusion about the need for local government's to establish their own Incident Command System. Subsequent subsections have been re-lettered.

Subsection [old] (b)(2)(C) has been repealed because this information is already addressed in Section 852.62.2(a)(1)(E). Subsequent subsections have been re-lettered.

Subsection [old](b)(2)(D) has been repealed because this information is already addressed in Sections 852.62.2(a)(1) and (a)(2). Subsequent subsections have been re-lettered.

Subsection [new](b)(2)(C) has been amended to update the title of the state representative on the Unified Command.

Subsection [new](b)(3)(A) has been amended to clarify that compliance with all other applicable training requirements is to be addressed.

Subsection [new](b)(3)(C) has been repealed because compliance with all other applicable state or federal training requirements has been addressed by the amendments to Subsection [new](b)(3)(A), and does not need to be reiterated here.

Subsection [new](b)(4) has been amended to include the name, title and phone number of the person to contact regarding participation in oil spill contingency plan drills, which will facilitate the local government's participation in this important training.

Subsection (c) has been amended to remove the restriction regarding the use of grant monies for mapping, which is consistent with the change in Section 852.61.5(b) which also eliminated the prohibition of using grant monies for mapping purposes.

Subsection (c)(1)(A) has been amended to specify that economic and cultural resources, as well as natural resources, need to be identified for oil spill contingency planning purposes. Economic resources (such as marinas and harbors) and cultural resources (such as historical and archeological sites) are also important to be identified so that appropriate prevention and protection strategies can be devised. Language has been repealed that would have required that the sites that are identified are consistent with sites identified by other plans and programs as described. This has been removed because sites that may potentially be impacted by an oil spill are not necessarily the same sites that would be identified by these other plans and programs, and the local government is in the best position to identify the site that may be potentially impacted by an oil spill without being restricted to consistency with other plans and programs.

Subsection (c)(1)(C) has been amended to remove the redundant requirement (to Subsection (c)(1)(A)) to list important natural or economic resources which may be impact during an oil spill.

Section 852.62.3 Submittal and Approval of Local Oil Spill Contingency Plan Elements.

This section contains grammatical/technical changes without regulatory effect.

DOCUMENTS RELIED UPON

Technical, theoretical or empirical studies or reports relied upon:

°None

BUSINESS IMPACT

The OSPR has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed amendments do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No alternative which was considered by the OSPR would be more effective than or equally as effective as and less burdensome to affected private persons than the proposed amended regulations

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 11346.2(b)(6), 11346.5, and 11349(f)

The regulations do not conflict with Federal statutes or regulations.